

ORD 1025  
10-18-12  
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**From:** MOORE Fredrick  
**To:** Bath, Bill; Cole, Connie  
**Subject:** FW: Lockheed Martin DOJ Review Issues  
**Date:** Wednesday, May 09, 2012 2:12:48 PM  
**Attachments:** Lockheed DOJ Review Issues.docx

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Hi Bill and Connie,

FYI, in preparation for our talk on Friday, here's what I conveyed to our DOJ folks. There's a handful of other issues which didn't need their input which we'll go over on Friday.

Cheers, Fredrick

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**From:** MOORE Fredrick  
**Sent:** Wednesday, May 09, 2012 12:47 PM  
**To:** VROOMAN Gary L; WHEELER Sarah  
**Cc:** DRUBACK Lissa  
**Subject:** Lockheed Martin DOJ Review Issues

Hi Gary (and Sarah),

Lissa and I had a phone call with EPA RCRA folks and there are 3 issues which could use legal input. I have summarized them in the attached memo.

I haven't listed a due date. Maybe you two can scan the memo and see what you think.

Cheers, Fredrick

Date: May 10, 2012

**To:** Gary Vrooman, DOJ  
Sarah Wheeler, OCE

**From:** Fredrick Moore, Permit Writer

**Subject:** Lockheed Martin; Outstanding Permit Renewal Issues with Region 10  
ORD 052 221 025

Yesterday, Lissa and I spoke with Christy Brown, Carla Fisher and Mike Slater with EPA Region 10 permitting. Also in attendance from DEQ were Sheila Monroe and Marcy Kirk. We had previously responded to their March 29 comments where we generally disagreed with about 20 of their 25 comments. From our call today, below are issues that could use your evaluation.

Issue No. 1: The RCRA leachate collection tank

*Description:*

EPA's previous comments stated that the tank, currently permitted as a RCRA tank must have the mandatory Subpart J requirements like a closure plan and included closure costs. DEQ does not want these undue requirements, so the permit renewal states the tank could also be considered a generator tank, but the permit then uses the omnibus authority to require the alarms and inspections currently used to be part of the permit renewal.

In the current permit renewal I'm working on, I identify the tank like this:

Type of Waste Unit	Unit No. or Other Designation	Maximum of Waste Inventory	Description of Waste Contained	EPA Hazardous Waste No.
Tank	Leachate Collection Tank [Sump]	482 gallons	Leachate from spent aluminum potliner landfill	K088

Note: The original permit issuance permitted this unit as a regulated Subpart J tank, in part, so that the tank could store leachate for more than 90 days. This tank currently produces minimal amounts of leachate, and therefore legitimately could be used as a generator tank. Lockheed Martin is currently a Conditionally Exempt Generator and as such no tank design and management standards would apply. But because this tank is integral to the landfill's leachate management system, DEQ is using its omnibus authority [40 CFR 270.32(b)(2)] to comply with current operation, maintenance and inspection requirements.

The tank is double-walled and located in a secondary containment concrete vault below ground in a building called the leachate transfer building. There are alarms for high-level and for detection of a leak from the tank's primary liner.

The sentence that says because they produce small amounts of leachate means they could be a generator tank needs a style edit; I'll do that later.

*EPA Issues:*

In general they are OK with the concept. They state the permit should say something about the 40 CFR 262 standards, and, because their generator status could change, leave out they are a CEG.

Additionally, they said that if I said they are currently a CEG, then the permit "locks" them into being a CEG for 10 years.

*DEQ Response:*

Generally, it is not a good idea to put in generator standards in a permit – permits are for regulated units and generators have to follow the automatic requirements of §262. It's not fair to put a permittee under both authorities and vulnerability.

*Question:*

When Sarah and I discussed it, it seemed if you folded in a generator tank unit using omnibus, then with permit-as-shield one would not expect generator compliance and reporting but rather just stick with the permit requirements. Is that correct? (I probably can leave out the CEG reference – but more of that later).

Does the note in the permit as currently written really "lock" the tank into being a CEG tank for 10 years? If yes, does it matter?

Issue No. 2: Citing 40 CFR Citations in the DEQ Hazardous Waste Permit

*Description:*

EPA wants the Lockheed permit renewal to use the federal cross reference language used in the Umatilla permit. DEQ wants to use a plain language equivalent.

*EPA's Feedback:*

They will not budge.

*DEQ's Response:*

OK, EPA will not budge. However, Gary has provided some word changes. DEQ will provide a new plain language version and Gary can evaluate it.

*Question:*

Is the new language adequate?

Issue No. 3: Treatment at a Post-Closure Facility

*Description:*

At the RCRA landfill, the permittee uses a blower at the top of the landfill at a gas vent to blow air out of the vent which then the ambient air at the side of the landfill, and air at the leachate tank and piping system, flows into the landfill mass and aids in biodegradation of the cyanide.

Also at the RCRA leachate tank, there is a light bulb positioned above the tank's opening (the tank rests in a sub-grade vault below the floor). This light bulb (100W, I think), provides light and ostensibly aids in the leachate evaporation.

*EPA's Issues:*

The light bulb and vacuum system is RCRA treatment. The permit needs to be a RCRA treatment permit. The permit must contain conditions addressing this treatment.

*DEQ's Response:*

Yes, it's a valid argument that this meets the treatment definition at 40 CFR 260.10. However, they are in the permit as both may be used and not more than that. The primary function of their inclusion in the permit is so it is clear to an inspector that their use is allowed. However, as a permit writer, the landfill functions well with or without them, and there really is not a condition I want to impose that could lead them into noncompliance. I also claim that because they are mentioned and allowed in the permit, then OK, it's both a post-closure and treatment permit, too.

At the time, I wanted to state that Lockheed was a CEG because at 40 CFR 261.5(g)(3) it states "A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility [if the generator ]is: (i) Permitted under part 270 of the chapter ..." My interpretation being that if as a CEG they can treat their wastes with the light bulb and vacuum, then the permit is folding in an activity they can do otherwise. However, I now think I can just put them in the permit as being an attachment to a regulated unit.

*Questions:*

If it is conceded that these two benign systems are treatment, that this now needs to be a treatment permit, then does the permit need bolstering to address any regulatory concerns?

Do I gain anything by mentioning their CEG status?

**From:** [Florum, Donna](#)  
**To:** [Cole, Connie](#); [Smith, Keith W.](#); [King, Gary](#); [Peters, Lynden](#)  
**Subject:** RE: Lockheed Martin DOJ Review Issues  
**Date:** Thursday, May 10, 2012 7:11:01 AM

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I have to agree with Bill with this one, I don't think a light bulb typically falls under "treatment".

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**From:** Cole, Connie  
**Sent:** Wednesday, May 09, 2012 6:33 PM  
**To:** Smith, Keith W.; King, Gary; Florum, Donna; Peters, Lynden  
**Subject:** FW: Lockheed Martin DOJ Review Issues

Looks like Bill is also thinking about this issue from a different angle.

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**From:** Bath, Bill [<mailto:bill.bath@lmco.com>]  
**Sent:** Wednesday, May 09, 2012 4:31 PM  
**To:** MOORE Fredrick; Cole, Connie  
**Subject:** RE: Lockheed Martin DOJ Review Issues

RE: issue 3, the bulb in the RCRA sump may be doing something that meets the definition of "treatment," but some things that meet the definition of treatment are not required to be permitted. Treatment in 90 day and 180 generator tanks does not require a permit. See 40 CFR 270.1©(2)(i). The latter does not specifically mention treatment, but if you do a google search on "RCRA treatment in generator tank," you will find numerous EPA guidances that affirm that a RCRA permit is not required for treatment at a generator tank. Since a permit is not required for generator tank treatment, it seems like a stretch for EPA to argue that the post closure permit must be a "treatment" permit.

The landfill fan issue doesn't fall in this category, as it is not a generator tank.

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**From:** MOORE Fredrick [<mailto:MOORE.Fredrick@deq.state.or.us>]  
**Sent:** Wednesday, May 09, 2012 2:13 PM  
**To:** Bath, Bill; Cole, Connie  
**Subject:** EXTERNAL: FW: Lockheed Martin DOJ Review Issues

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